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Fish and Game Commission



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December 2, 2013

TO ALL INTERESTED AND AFFECTED PARTIES:

This is to provide you with a copy of the notice of proposed regulatory action relative to sections 149 and 149.1, Title 14, California Code of Regulations, relating to the commercial take of market squid, which will be published in the California Regulatory Notice Register on December 6, 2013.

Please note the dates of the public hearings related to this matter and associated deadlines for receipt of written comments.

Dr. Craig Shuman, Manager of Marine Region, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.

Sincerely,

Sherrie Fonbuena
Associate Governmental Program Analyst

Attachment

TITLE 14. Fish and Game Commission

Notice of Proposed Changes in Regulations

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 713, 1050, 7078, 7701, 7708, 7923, 8026, 8425, 8428 and 8429.5 of the Fish and Game Code and to implement, interpret or make specific sections 1050, 7050, 7071, 7701, 7708, 7852.2, 7923, 8026, 8101, 8425, 8428, 8429.5, 8429.7, 12159 and 12160 of said Code, proposes to amend Section 149 and subsection (a) of Section 149.1, Title 14, California Code of Regulations (CCR), relating to the commercial take of market squid.

Informative Digest/Policy Statement Overview

The Market Squid Fishery Management Plan (MSFMP) was developed under the provisions set forth by the Marine Life Management Act (MLMA) and sets goals and objectives to govern the conservation, sustainable use, and restoration of the market squid resource. Section 149, Title 14, CCR, governs commercial market squid fishing activities off California, pursuant to the MSFMP.

Under current regulations, market squid is allowed to be landed commercially after the catch limit of 118,000 short tons has been reached so long as the amount does not exceed two tons within a calendar day or if the squid will be used for live bait. The regulation also provides for an incidental allowance of up to two tons per calendar day or per trip; however, "incidental" is not defined. The intent of this regulation was to allow for incidental take of market squid in other fisheries. It was never the intent, nor is it compatible with the management goals of the MSFMP to have a two ton directed fishery occurring after the Seasonal Catch Limit has been reached. The Department proposes to clarify regulations defining incidental take to ensure that after the season ends, market squid is only landed or possessed on a vessel incidental to the take of other species or for live bait purposes.

The following changes are proposed:

- Subsection 149(h): Modify language and broaden the scope of the regulation to specify that squid taken in violation of any commercial squid fishing law or regulation shall be forfeited to the Department. Also, the requirement that squid fishermen or buyers sign a release of property form is proposed to be repealed.
- Subsection 149(l): Modify the incidental take provisions specifying that incidentally taken squid shall meet the following criteria:
 - 1) The volume landed or possessed on a vessel cannot exceed two tons per trip;
 - 2) The amount of squid incidentally taken cannot exceed a specified percentage of the total volume of the fish landed or possessed on a vessel. The Department is proposing that the Commission consider an incidental take allowance ranging from 0 – 30 percent.

The Department recommends establishing an incidental take allowance of 10 percent; however, the Commission may select an incidental take allowance within the range between 0 and 30 percent.

The following changes are also proposed to improve the organization, clarity and consistency of the regulations:

- Subsection 149(a): Add text referencing the existing permit requirements in Section 149.1 for vessels fishing for market squid, and to clarify that vessels taking or possessing squid incidentally or for live bait are not subject to these permit requirements.
- Subsections 149(a-i): Renumber each subsection due to the proposed addition of the new subsection 149(a).
- Subsection 149(i): Removal of "or to vessels pursuing squid for live bait purposes only" is proposed because the exemption of live bait is clarified in the proposed opening paragraph of the regulatory language.
- Subsection 149(k): Changes are proposed to clarify that operators and crewmembers on a permitted market squid vessel are exempt from the requirement to possess a Tidal Invertebrate Permit.
- Subsection 149(m): Clarify that squid taken for live bait must be used for that purpose and that take of live squid for bait is exempt from other requirements in Section 149, unless expressly specified.
- Subsection 149.1(a): Update cross reference to current subsection 149(g) to reflect renumbering of Section 149 subsections.

Benefits of the Regulation

The proposed regulatory action will benefit fishermen, processors, the State's economy, and the environment by maintaining a healthy sustainable market squid fishery.

Consistency with State Regulations

The proposed regulations are neither inconsistent nor incompatible with existing state regulations. The proposed regulations are consistent and compatible with regulations concerning the commercial take of market squid in marine protected areas [subsection 632(b), Title 14, CCR] and with regulations concerning squid weighing provisions (sections 4470, 4471, 4472, Title 4, CCR). Commission staff has searched the California Code of Regulations and statutes and has found no other state regulations related to the take of market squid and no other state agency with authority to promulgate commercial squid fishing regulations.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Hilton San Diego Mission Valley, 901 Camino del Rio South, San Diego, California, on Wednesday, December 11, 2013 at 8:30 a.m., or as soon thereafter as the matter may be heard.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Resources Building Auditorium, 1416 Ninth Street, Sacramento, California, on Wednesday, February 5, 2014, at 8:00 a.m., or as soon thereafter as the matter may be heard.

Written comments may be submitted at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov. **Written comments delivered to the Commission office must be received before 5:00 p.m. on January 31, 2014.** All comments must be received no later

than February 5, 2014, at the hearing in Sacramento, CA. If you would like copies of any modifications to this proposal, please include your name and mailing address.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Sonke Mastrup, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct requests for the above mentioned documents and inquiries concerning the regulatory process to Sonke Mastrup or Sherrie Fonbuena at the preceding address or phone number. **Dr. Craig Shuman, Marine Region Manager, Department of Fish and Wildlife, phone (805) 568-1246, has been designated to respond to questions on the substance of the proposed regulations.** Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action/Results of the Economic Impact Analysis

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made.

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations continue to allow all actively permitted market squid vessels (vessel, light, and brail) to participate in a directed fishery for market squid during the commercial market squid season until the season closes. The proposed regulations close the loophole, which unintentionally allows directed fishing after the Seasonal Catch Limit has been reached. Allowing directed squid fishing after the season is closed can pose risk to the squid resource and the ecosystems that rely on it, while also creating an unfair market advantage for those who have availed themselves of the loophole in past seasons when the fishery closed early. In addition, the proposed regulations would set limits on the allowable take of squid caught incidentally in landings with other species.

Brail fishermen, like all squid permittees, will be authorized to fish for squid only up until the Seasonal Catch Limit has been reached. The proposed regulations clarify that when the fishery is closed, it is closed for all directed commercial squid fishing activity

regardless of gear type. Impacts to individual fishing operations will vary, as some operations may maximize their squid fishing efforts early in the season, while others may not begin squid fishing activity until later in the season. Neither the MSFMP nor existing regulations establish allocations of squid between fishermen or fishery sectors to allow them to select desired fishing dates. Rather, the fishery operates on a single seasonal limit, which has been attained in only four seasons since the limit's inception in 2001.

Under the proposed regulatory amendments, fishermen currently taking advantage of this loophole will no longer be able to take up to two tons of squid per day after the Seasonal Catch Limit has been reached unless it occurs incidentally to another fishery. Therefore the proposed regulation changes are not expected to result in significant statewide adverse economic impacts to businesses. Additionally, if the full seasonal catch limit is attained, there has likely been a great deal of economic success for at least some squid fishing operations and businesses. Market squid fishery permits of all gear types provide authorization to commercially fish for squid during the open season and time periods, but regulations do not provide more refined opportunities for some sectors, gears or individual vessels at the exclusion of others.

Depending on which option is chosen, limits on the percent composition of squid caught incidentally could result in impacts to aggregate ex-vessel revenue potential for the 36 fishermen affected. The estimated, per season aggregate revenue impacts resulting from a zero to 30 percent incidental take limit are \$(804,000) to \$(19,000), respectively. Dis-aggregating these estimates result in a projected average potential revenue impact of \$(7,000) to \$(200), respectively, per fishermen per season.

Under the proposed regulations, limits on the percent composition of squid caught incidentally ranging from zero to 30 percent could result in statewide economic impacts of \$(521,000) to \$(13,000), respectively, in total economic output. These estimates are on a per season basis, and represent the aggregate impact to all 36 fishermen potentially affected by incidental take limits on squid. In light of the entire landings taken by these fishermen, the zero to 30 percent limits would affect statewide economic output by about -2.1 percent to -0.1 percent, respectively.

Overall, the ex-vessel fishing revenue of squid landings after the early season closure averaged only 1.10 percent of total seasonal squid landings ex-vessel fishing revenue from 2010-2013. When viewed as a percentage of landings using brail gear only, landings after the closure constituted a larger proportion of total landings for this gear type, averaging 31.82 percent over the last three years. Compared to average after-season-closure landings over the past three years (2010-2013), the proposed regulatory change to eliminate the two ton directed take of squid could result in the direct loss of ex-vessel fishing revenue of about \$(726,000), indirect losses in the amount of \$(76,000), and the potential loss of up to eight (8.0) jobs. It is important to note that there are seasons when the squid fishery does not close early; therefore, the unintended directed fishery during the post-closure period would not occur during these seasons nor would associated income be earned.

The Commission recognizes that some individuals, vessels, and processing plants engaged in the market squid fishery have no other viable alternative fisheries available to them and that a decline or a loss of the market squid resource would cause economic losses to the individuals or corporations engaged in the market squid fishery. However the continued management of this marine resource through the implementation of these

regulations will serve to preserve the ongoing viability of market squid fisheries and associated businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California; Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The Commission does not anticipate significant adverse impacts on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Depending on which option the Commission chooses, potential job losses range from 0.5 to 0.1 for an incidental take allowance from 5 percent to 30 percent, respectively; if the Commission decides not to allow incidental take of squid (zero allowance), then three jobs could be lost. These estimates are on a per season basis, and represent the aggregate impact arising from all 36 fishermen potentially affected by incidental take limits on squid.

Up to eight jobs could be lost if the 2-ton directed fishery is eliminated in years when the fishery closes early. Estimated job losses are for the squid fishery; spending to businesses linked to fishery operations; and for businesses impacted by direct and intermediary employees' spending. Thus, job losses would be shared across an array of associated businesses which would lessen adverse impacts to the viability of individual squid fishery businesses. Additionally, the overall economic effects of eliminating the 2-ton directed fishery are likely to be ameliorated by other revenue sources such as lighting or targeting other species.

The Commission anticipates benefits to the environment in the sustainable management of the squid resource and benefits to species dependent upon a healthy squid resource.

The Commission anticipates generalized benefits to the health and welfare of California residents through the protection of the market squid population and the fish and wildlife resources that depend upon them. The Commission does not anticipate any benefits to worker safety because the proposed regulations will not impact worker conditions.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The state may incur landings tax revenues losses. Depending on which option the Commission selects, the decreases in landings tax revenues could range from \$20,000 to \$195,000 per year. There will be no costs/savings in federal funding to the state.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None

- (f) Programs Mandated on Local Agencies or School Districts: None

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code: None

(h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342.580 and 11346.2(a)(1).

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

FISH AND GAME COMMISSION

Sonke Mastrup
Executive Director

Dated: November 26, 2013

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